



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

#### **[EPA-R09-OAR-2019-0051; FRL-9999-49-Region 9]**

### **Approval of Air Quality Implementation Plans; California; South Coast Air Basin; 1-Hour and 8-Hour Ozone Nonattainment Area Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve, or conditionally approve, all or portions of five state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or “the Act”) requirements for the 1979 1-hour, 1997 8-hour, and 2008 8-hour ozone national ambient air quality standards (NAAQS or “standards”) in the Los Angeles – South Coast Air Basin, California (“South Coast”) ozone nonattainment area. The five SIP revisions include the “Final 2016 Air Quality Management Plan,” the “Revised Proposed 2016 State Strategy for the State Implementation Plan,” the “2018 Updates to the California State Implementation Plan,” the “Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration,” and a local emissions statement rule. In today’s action, the EPA refers to these submittals collectively as the “2016 South Coast Ozone SIP.” The 2016 South Coast Ozone SIP addresses the nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for an emissions inventory, attainment demonstration, reasonable further progress, reasonably available control measures, contingency measures, among others; establishes motor vehicle emissions budgets; and updates the previously-approved

control strategies and attainment demonstrations for the 1-hour ozone NAAQS and the 1997 ozone NAAQS. The EPA is taking final action to approve the 2016 South Coast Ozone SIP as meeting all the applicable ozone nonattainment area requirements except for the reasonable further progress contingency measure requirement, for which the EPA is finalizing a conditional approval.

**DATES:** This rule will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0051. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3963, or by email at [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

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## **I. Summary of the Proposed Action**

On June 17, 2019 (84 FR 28132), the EPA proposed to approve, under CAA section 110(k)(3), and to conditionally approve, under CAA section 110(k)(4), portions of submittals from the California Air Resources Board (CARB or “State”) and the South Coast Air Quality Management District (SCAQMD or “District”) as revisions to the California SIP for the South Coast ozone nonattainment area.<sup>1</sup> The relevant SIP revisions include SCAQMD’s Final 2016 Air Quality Management Plan (“2016 AQMP”), CARB’s Revised Proposed 2016 State Strategy for the State Implementation Plan (“2016 State Strategy”), CARB’s 2018 Updates to the California State Implementation Plan (“2018 SIP Update”), SCAQMD’s Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration (“1-Hour Ozone Update”), and SCAQMD’s local emissions statement rule (i.e., certain paragraphs of District Rule 301 (“Permitting and Associated Fees”). With respect to the SCAQMD emissions statement rule, our proposal was based on a public draft version of the rule and requests from the District and CARB that the EPA accept the public draft for parallel processing.<sup>2</sup> Since publication of the proposed rule, the District has adopted, and CARB has submitted, the emissions statement rule as a SIP revision. The SIP submittal of the emissions statement rule is discussed in more detail in section II of this document. Collectively, we refer to the relevant portions of the five SIP revisions as the “2016 South Coast Ozone SIP,” and we refer to our June 17, 2019 proposed rule as the “proposed rule.”

Our proposed conditional approval of the reasonable further progress (RFP) contingency measure element of the 2016 South Coast Ozone SIP relied on specific commitments: (1) from

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<sup>1</sup> The South Coast ozone nonattainment area includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. A precise description of the South Coast ozone nonattainment area is contained in 40 CFR 81.305.

<sup>2</sup> Letters dated May 17, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB, and May 20, 2019, from Richard W. Corey, Executive Officer, CARB to Michael Stoker, Regional Administrator, EPA Region IX.

the District to modify an existing rule or rules, or adopt a new rule(s), that would provide for additional emissions reductions in the event that the South Coast fails to meet an RFP milestone, and (2) from CARB to submit the revised or new District rule(s) to the EPA as a SIP revision within 12 months of our final action.<sup>3,4</sup> For more information on these submittals, please see our proposed rule.

In our proposed rule, we provided background information on the ozone standards,<sup>5</sup> area designations, and related SIP revision requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule ("2008 Ozone SRR"). To summarize, the South Coast ozone nonattainment area is classified as Extreme for the 1-hour, 1997 and 2008 ozone standards, and the 2016 South Coast Ozone SIP was developed to update the attainment plans for the 1-hour and 1997 ozone NAAQS and to address the requirements for this Extreme nonattainment area for the 2008 ozone NAAQS.

In our proposed rule, we also discussed a decision issued by the D.C. Circuit Court of Appeals in *South Coast Air Quality Management Dist. v. EPA*, ("*South Coast II*")<sup>6</sup> that vacated certain portions of the EPA's 2008 Ozone SRR. The only aspect of the *South Coast II* decision

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<sup>3</sup> Letters dated January 29, 2019 and May 2, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB.

<sup>4</sup> Letter dated February 13, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, and letter dated May 20, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX.

<sup>5</sup> Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in the presence of sunlight. The 1-hour ozone NAAQS is 0.12 parts per million (ppm) (one-hour average), the 1997 ozone NAAQS is 0.08 ppm (eight-hour average), and the 2008 ozone standard is 0.075 ppm (eight-hour average). CARB refers to reactive organic gases (ROG) in some of its ozone-related submittals. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this final rule, we use the term federal term (VOC) to refer to this set of gases.

<sup>6</sup> *South Coast Air Quality Management Dist. v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018). The term "*South Coast II*" is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as "*South Coast*." The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

that affects this action is the vacatur of the provision in the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating RFP. To address this, in the 2018 SIP Update, CARB submitted an updated RFP demonstration that relied on a 2011 baseline year as required, along with updated motor vehicle emissions budgets (MVEBs) associated with the new RFP milestone years.

With respect to the contingency measure requirement, in our proposed rule, we noted that the EPA's longstanding interpretation of section 172(c)(9) that states may rely on already-implemented measures as contingency measures (if they provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements) was rejected by the Ninth Circuit Court of Appeals in a case referred to as *Bahr v. EPA* ("*Bahr*").<sup>7</sup> In *Bahr*, the Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or to attain by the applicable attainment date, not before.<sup>8</sup> Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already-implemented control measures to comply with the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9).<sup>9</sup>

For our proposed rule, we reviewed the various SIP elements contained in the 2016 South Coast Ozone SIP, evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements with the exception of the RFP contingency measure element. More specifically, in our proposal rule, we determined the following:

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<sup>7</sup> *Bahr v. EPA*, 836 F.3d 1218, at 1235-1237 (9th Cir. 2016).

<sup>8</sup> *Id.* at 1235-1237.

<sup>9</sup> The *Bahr v. EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but, given the similarity between the statutory language in section 172(c)(9) and the ozone-specific contingency measure provision in section 182(c)(9), we find that the decision affects how both sections of the Act must be interpreted.

- CARB and the District met all applicable procedural requirements for public notice and hearing prior to the adoption and submittal of the 2016 AQMP, 2016 State Strategy, 2018 SIP Update and 1-Hour Ozone Update;
- The 2012 base year emissions inventory from the 2016 AQMP is comprehensive, accurate, and current and thereby meets the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS, and future year baseline projections reflect appropriate calculation methods and the latest planning assumptions and are properly supported by SIP-approved stationary and mobile source measures (see 84 FR 28137-28139 from the proposed rule);
- The emissions statement element of the 2016 AQMP, including public draft version of District Rule 301 (specifically, paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)), meets the requirements for emissions statements under CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS (see 84 FR 28139-28140 from the proposed rule);
- The process followed by the District to identify reasonably available control measures (RACM) is generally consistent with the EPA's recommendations; the District's rules and commitments made to adopt certain additional measures provide for the implementation of RACM for stationary and area sources of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC); CARB and the Southern California Association of Governments (SCAG) provide for the implementation of RACM for mobile sources of NO<sub>x</sub> and VOC; there are no additional RACM that would advance attainment of the 2008 ozone NAAQS in the South Coast by at least one year; and therefore, the 2016 AQMP and 2016 State Strategy provide for the implementation of all RACM as required by

CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone NAAQS (see 84 FR 28140-28143 from the proposed rule);

- The photochemical modeling in the 2016 AQMP and 1-Hour Ozone Update shows that existing CARB and District control measures, plus CARB and District commitments to achieve additional emissions reductions in the 2016 AQMP and 2016 State Strategy, are sufficient to attain the 1-hour, 1997 and 2008 ozone NAAQS by the applicable attainment dates in the South Coast; given the extensive documentation in the 2016 AQMP of modeling procedures and good model performance, the modeling is adequate to support the attainment demonstrations for the three ozone NAAQS; and therefore, the 2016 South Coast Ozone SIP meets the attainment demonstration requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108 (see 84 FR 28143-28157 from the proposed rule);
- As provided in our SRR, the previously-approved 15 percent rate-of-progress (ROP) demonstration for the 1-hour ozone NAAQS for the South Coast meets the ROP requirements of CAA section 182(b)(1) for the South Coast for the 2008 ozone NAAQS given that the boundaries of the South Coast nonattainment area for the 1-hour ozone NAAQS and the 2008 ozone NAAQS are the same (see 84 FR 28157-28158 from the proposed rule);
- The RFP demonstration in the 2018 SIP Update provides for emissions reductions of VOC or NO<sub>x</sub> of at least 3 percent per year on average for each three-year period from a 2011 baseline year through the attainment year and thereby meets the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii) for the 2008 ozone NAAQS (see 84 FR 28157-28158 from the proposed rule);

- The 2016 AQMP (specifically, appendix VI-E (“VMT Offset Demonstration”)) demonstrates that CARB and SCAG have adopted sufficient transportation control strategies and transportation control measures to offset the growth in emissions from growth in vehicle-miles-traveled (VMT) and vehicle trips in the South Coast, and thereby complies with the VMT emissions offset requirement in CAA section 182(d)(1)(A) and 40 CFR 51.1102 for the 2008 ozone NAAQS (see 84 FR 28158-28161 from the proposed rule);
- Through EPA-approved District Rules 1303 (“Requirements”), 1146 (“Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters”), and 2004 (“Requirements”) (paragraph (h)), the 2016 AQMP meets the clean fuels or advanced control technology for boilers requirement in CAA section 182(e)(3) and 40 CFR 51.1102 for the 2008 ozone NAAQS (see 84 FR 28163-28164 from the proposed rule);
- The MVEBs for the RFP milestone years of 2020, 2023, 2026, 2029, and the attainment year of 2031 from the 2018 SIP Update are consistent with the RFP and attainment demonstrations, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements in 40 CFR 93.118(e), including the adequacy criteria in 40 CFR 93.118(e)(4) and (5) (see 84 FR 28164-28166 from the proposed rule);<sup>10</sup>

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<sup>10</sup> In light of CARB’s request to limit the duration of the approval of the budgets in the 2018 SIP Update and in anticipation of the EPA’s approval, in the near term, of an updated version of CARB’s EMFAC (short for EMISSION FACTOR) model for use in SIP development and transportation conformity in California to include updated vehicle mix and emissions data, we proposed to limit the duration of our approval of the budgets until replacement budgets have been found adequate. See pages 28165-28166 from the proposed rule.



- The general conformity budgets in the 2016 AQMP are established for a set time period, cover both precursors of ozone, are precisely quantified, and are consistent with the attainment demonstrations for the three ozone NAAQS in the South Coast, and the 2016 AQMP provides an adequate tracking procedure to ensure compliance (see 84 FR 28166-28167 from the proposed rule); and
- Through previous EPA approvals of the State's I/M program, the 1994 "Opt-Out Program" SIP revision, the 1993 Photochemical Assessment Monitoring Station (PAMS) SIP revision, and the 2016 annual monitoring network plan for the South Coast, the 2016 AQMP adequately addresses for the 2008 ozone NAAQS: the enhanced vehicle inspection and maintenance (I/M) requirements in CAA section 182(c)(3) and 40 CFR 51.1102; the clean fuels fleet program in CAA sections 182(c)(4) and 246 and 40 CFR 51.1102; and the enhanced ambient air monitoring requirements in CAA section 182(c)(1) and 40 CFR 51.1102 (see 84 FR 28167-28168 from the proposed rule).

With respect to the RFP contingency measure element of the 2016 South Coast Ozone SIP, we proposed to conditionally approve the element as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for the 2008 ozone NAAQS, based on commitments by CARB and the District to supplement the element through submission of a SIP revision within one year of final conditional approval action that will include a revised or new District rule or rules.<sup>11</sup> See pages 28161-28163 from the proposed rule.

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<sup>11</sup> In light of the proposed approval of the attainment demonstration for the 2008 ozone NAAQS, the reliance of the attainment demonstration on section 182(e)(5) new technology measures, and CARB's clarification concerning the agency's commitment to submit section 182(e)(5) contingency measures, we proposed to find that CARB's commitment to submit attainment contingency measures provides an adequate basis to defer submittal of attainment contingency measures meeting the requirements in CAA section 172(c)(9) for the 2008 ozone NAAQS until 2028.

Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for approval or conditional approval of the above-listed elements of the 2016 South Coast Ozone SIP.

## **II. Submittal of District Rule 301**

As noted above, we proposed to approve the emissions statement element of the 2016 South Coast Ozone SIP based on a public draft version of District Rule 301 (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)) and a May 20, 2019 request from CARB that the EPA accept the public draft version of District Rule 301 for parallel processing. Under the EPA's parallel processing procedure, the EPA may propose action on a state's public draft version of a SIP revision but will take final action only after the state adopts and submits the final version to the EPA for approval.<sup>12</sup> If there are no significant changes from the draft version of the SIP revision to the final version, the EPA may elect to take final action on the proposal.

In this case, on July 12, 2019, the District adopted without significant modifications the final version of District Rule 301 previously released for public review, and on August 5, 2019, CARB adopted and submitted District Rule 301 to the EPA as a revision to the California SIP.<sup>13</sup> The submittal includes CARB Executive Order S-19-011 adopting the specified sections of District Rule 301 as a revision to the SIP, a copy of District Rule 301 itself, and documentation of public notice and opportunity to comment on the draft rule. We based our proposed action on the public draft version of District Rule 301 submitted to us on May 20, 2019, and we are now finalizing our action based on the August 5, 2019 submittal of the final adopted version of District Rule 301.

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<sup>12</sup> See 40 CFR part 51, appendix V, section 2.3.

<sup>13</sup> Letter dated August 5, 2019, from Richard W. Corey, CARB Executive Officer, to Michael Stoker, Regional Administrator, EPA Region IX.

For this final rule, we have evaluated the August 5, 2019 submittal for compliance with CAA procedural requirements for adoption and submission of SIP revisions. Specifically, CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

The District and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submittal of District Rule 301. On May 17, 2019, the District published a notice of public hearing to be held on July 12, 2019, to consider approval of amendments to District Rule 301, including the addition of a paragraph requiring certification of annual emissions information. On July 12, 2019, the District held the hearing, adopted the amendments to District Rule 301, as proposed, and approved the submission of District Rule 301 (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)) to CARB for submittal to the EPA for inclusion into the California SIP.<sup>14</sup> On August 5, 2019, through Executive Order S-19-011, the CARB Executive Officer approved the relevant portion of District Rule 301 as a revision to the California SIP, and on August 5, 2019, CARB submitted it to the EPA. Because the District and CARB have complied with all applicable procedural requirements for adoption and submittal of SIP revisions, and because the final, adopted version of District Rule 301 is essentially the same as the draft version of the rule for which we proposed approval, we are taking final action today to approve District Rule 301

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<sup>14</sup> See District Resolution 19-15.

(paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8) only) as meeting the emissions statement requirements of CAA 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS.

### **III. Public Comments and EPA Responses**

The public comment period on the proposed rule opened on June 17, 2019, the date of its publication in the *Federal Register*, and closed on July 17, 2019. During this period, the EPA received two anonymous comments, two comment letters submitted by private individuals, one comment letter submitted on behalf of the North American Insulation Manufacturers Association (NAIMA), and one comment letter submitted by Earthjustice on behalf of the Center for Community Action & Environment Justice (CCA EJ).<sup>15</sup>

One of the anonymous commenters expresses overall support for the proposed action. The other anonymous commenter describes certain pending legislation in Congress, an issue that is outside the scope of this rulemaking. One of the private individuals submitted numerous documents to the EPA, but the commenter's written comment does not relate to any specific aspect of our proposed rule nor does it explain the relevance of the submitted documents to our proposed action. The EPA is not responding to these three commenters, either because their comments are not adverse to, or because they are not relevant to, the proposed action. With respect to the other commenters, we provide summaries of the comments and our responses thereto in the following paragraphs. All the comments received are included in the docket for this action.

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<sup>15</sup> In addition to the comments received during the comment period, on August 2, 2019, we received a late comment from the Scientific Integrity Institute challenging the validity of statements in the proposed rule concerning public health effects at current ozone exposure levels experienced by residents in the South Coast. This late comment has been placed in the rulemaking docket but is not addressed in this final rule because it is untimely.

***Comment #1:*** A private individual makes numerous general assertions against the State of California regarding, for example, motor vehicle standards, interstate commerce, California's high-speed rail project, and the California Environmental Quality Act (CEQA). Citing three specific examples,<sup>16</sup> the commenter alleges inadequate consideration of public comments by State and local public agencies during environmental review of projects or documents that are subject to the State's CEQA process. The commenter contends that such inadequacies are systemic in California and, as such, apply to the State's actions in nonattainment areas. The commenter also alleges failure by California public agencies to reduce the impacts of increased commute times through adoption of appropriate land use policies and trip reduction measures.

***Response #1:*** Because the general assertions against California described by the commenter are not linked by the commenter to specific aspects of our proposed rule, the EPA is not responding to the assertions. As described in the proposed rule<sup>17</sup> and in section II of this document, we have reviewed the public process documentation for the development, adoption and submittal of the five SIP revisions that collectively comprise the 2016 South Coast Ozone SIP and conclude that they meet the procedural requirements for public notice and hearing for SIP revisions as set forth in CAA sections 110(a) and 110(l) and 40 CFR 51.102. None of the specific examples cited by the commenter relate to the public processes (including CEQA) used by the District and CARB to develop, adopt and submit the 2016 South Coast Ozone SIP, and a generalized assertion about alleged inadequacies generally to meet California public agency public processes (e.g., CEQA) is not sufficient to contradict the specific findings we have made

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<sup>16</sup> U.S. Highway 101 widening project in south Santa Barbara County involving the California Department of Transportation; Santa Barbara County's Fast Forward 2040 Federal Transportation Improvement Plan update; and CARB's Zero Emission Airport Shuttle Regulation.

<sup>17</sup> See 84 FR 28132, at 28136-28137 (June 17, 2019).

in connection with the public processes used by the District and CARB in developing, adopting and submitting the 2016 South Coast Ozone SIP.

With respect to land use policies and trip reduction measures to reduce commute-related vehicle emissions, we note that the 2016 AQMP includes a number of transportation control measures that are intended to reduce vehicle use or change traffic flow or congestion conditions.<sup>18</sup>

**Comment #2:** For a number of reasons, including the absence of fiberglass manufacturing facilities in the South Coast, the risk of unwarranted precedent for similar types of rules in other SIPs, and technical infeasibility, NAIMA urges the EPA to delete, from the EPA’s proposed rule, the modification of District Rule 1117 (“Emissions of Oxides of Nitrogen from Glass Melting Furnaces”) to remove the exemption for idling fiberglass furnaces.

**Response #2:** In 1990, the EPA approved District Rule 1117 (amended January 6, 1984) as a revision to the SCAQMD portion of the California SIP.<sup>19</sup> The SIP-approved version of District Rule 1117 includes exemptions for furnaces used in the melting of glass for the production of fiberglass exclusively and for idling furnaces.<sup>20</sup> In our June 17, 2019 proposed rule, we did not propose to remove the exemption for idling fiberglass furnaces in District Rule 1117 in the current approved SIP for SCAQMD, and our final action on the 2016 South Coast Ozone SIP will have no effect on District Rule 1117.

In our proposed rule, we do refer to the removal of exemptions in District Rule 1117 for idling furnaces used in the melting of glass for the production of fiberglass, but we do so as an

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<sup>18</sup> See 2016 AQMP, attachment A (“Committed Transportation Control Measures (TCMs)”) to appendix IV-C (“Regional Transportation Strategy and Control Measures”).

<sup>19</sup> 55 FR 28624 (July 12, 1990).

<sup>20</sup> District Rule 1117, paragraphs (d)(5) and (d)(6).

example of the type of rule amendments that the District has included in its commitment to revise a District rule or rules to include as an RFP contingency measure.<sup>21</sup> In other words, this is a potential change to the existing SIP for SCAQMD that the District and CARB may determine is appropriate for use as a contingency measure in the event of future failures to meet the RFP requirement. The District's commitment is contained in a letter dated May 2, 2019, that clarifies an earlier commitment letter from the District dated January 29, 2019.<sup>22</sup> The District's May 2, 2019 letter lists 12 different rules, including District Rule 1117, that the District intends to review for possible inclusion as an RFP contingency measure. The letter also describes the types of amendments that the District and CARB are likely to consider for each of the rules, including, in some cases, the removal of exemptions.

In our final action on the 2016 South Coast Ozone SIP today, we are not approving the District's letters as part of the SIP or taking any action on potential changes to the District rules cited therein, but we are relying on the letters as the basis, in part, on which to conditionally approve the contingency measure element, as authorized under CAA section 110(k)(4). Over the course of the next year, to fulfill the commitment made with respect to the RFP contingency measure element, we expect the District to initiate rulemaking proceedings with respect to one or more of the rules listed in the May 2, 2019 commitment letter. We anticipate that such rulemaking proceedings would lead to adoption by the District of a provision for the removal of exemptions or lowering of emissions limits upon a determination by the EPA that the South

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<sup>21</sup> See 28162 from the June 17, 2019 proposed rule. The term "RFP contingency measure" refers to contingency measures to take effect if an area fails to meet an RFP milestone as required by CAA section 182(c)(9). RFP contingency measure is used to distinguish contingency measures to address failures to meet an RFP milestone from "attainment contingency measures" that are intended to address a failure by an area to attain the NAAQS by the applicable attainment date as required by CAA section 172(c)(9).

<sup>22</sup> Letters dated January 29, 2019 and May 2, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB.

Coast has failed to meet an RFP milestone for the 2008 ozone NAAQS. NAIMA is encouraged to participate in the District's rulemaking process if District Rule 1117 is selected by the District for amendment to include such an RFP contingency measure.

***Comment #3:*** CCAEJ asserts that the EPA violates the CAA by waiving the previously adopted commitment to adopt section 182(e)(5) contingency measures for the 1-hour ozone NAAQS. According to CCAEJ, the EPA has no basis to determine whether the section 182(e)(5) measures have achieved the planned reductions as called for in section 182(e)(5), and the EPA cannot demonstrate that the section 182(e)(5) measures will achieve the necessary reductions to attain the 1-hour ozone NAAQS by the 2022 attainment year because we have not reached the deadline. CCAEJ also asserts that the decision to waive the section 182(e)(5) contingency measures is also arbitrary and capricious because taking away these contingency measure protections removes a necessary backstop for people in Extreme ozone nonattainment areas and presents people in the region with fewer protections if the area fails to attain the 1-hour ozone NAAQS.

***Response #3:*** We agree that the CAA does not allow the EPA to “waive” a commitment that has been approved as part of a SIP. In this action, the EPA is not waiving any commitment, but rather, we are approving a SIP revision that demonstrates that the commitment is moot because the 1-hour ozone control strategy no longer relies on section 182(e)(5) new technology measures. If new technology measures are no longer needed, then section 182(e)(5) contingency measures are no longer required, and if section 182(e)(5) contingency measures are no longer required, then an enforceable commitment to submit section 182(e)(5) contingency measures no longer serves any purpose.



Section 182(e)(5) of the CAA allows the EPA to approve an attainment demonstration for an Extreme ozone nonattainment area based on provisions that anticipate development of new control techniques or improvement of existing control technologies (herein, “new technology measures”) if the state has submitted enforceable commitments to develop and adopt contingency measures (herein, “section 182(e)(5) contingency measures”) if the new technology measures do not achieve planned reductions. The section 182(e)(5) contingency measures must be submitted to the EPA as a SIP revision no later than 3 years before implementation of the plan provisions (i.e., three years before the attainment year on which the attainment demonstration is based), and the section 182(e)(5) contingency measures must be adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to attain the ozone NAAQS by the applicable attainment date.

In 2014, the EPA approved the attainment demonstration for the 1-hour ozone NAAQS for the South Coast in the “Final 2012 Air Quality Management Plan” (“2012 AQMP”).<sup>23</sup> The 1-hour ozone attainment demonstration in the 2012 AQMP relied upon new technology measures to achieve emissions reductions of 17 tons per day (tpd) of VOC and 150 tpd of NO<sub>x</sub> in the South Coast by January 1, 2022. The new technology measures in the 2012 AQMP were supported by a commitment by CARB to submit section 182(e)(5) contingency measures by January 1, 2019, as necessary to ensure that the emissions reductions from new technology measures are achieved.

The 2016 AQMP and 1-Hour Ozone Update revise the attainment demonstration for the 1-hour ozone NAAQS for the South Coast to reflect updated emissions inventories, photochemical modeling, and control strategy. In adopting the 1-Hour Ozone Update, CARB

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<sup>23</sup> 79 FR 52526 (September 3, 2014).

found that the 1-Hour Ozone Update demonstrates that identified District control measures will achieve the emissions reductions needed for attainment of the 1-hour ozone NAAQS by 2022 without additional reductions from new technology measures and that section 182(e)(5) requirements no longer apply to the South Coast for the 1-hour ozone NAAQS.<sup>24</sup>

The District control measures to which CARB refers are included in the District's aggregate emissions reduction commitments through which the District commits to develop, adopt, submit and implement certain ozone measures to achieve emissions reductions in the aggregate of 20.6 tpd of NO<sub>x</sub> and 6.1 tpd of VOC by 2022.<sup>25</sup> The District's aggregate emissions reduction commitment in the 2016 AQMP (to take certain actions and achieve reductions of 20.6 tpd of NO<sub>x</sub> and 6.1 tpd of VOC by 2022) fills the gap between the 2022 adjusted baseline emissions level (that reflects already-adopted measures) and 2022 modeled attainment emissions level for the 1-hour ozone NAAQS.<sup>26</sup> Thus, there is no further need to rely on new technology measures, and thus, no need for the corresponding section 182(e)(5) contingency measures.

In this action, we are approving the updated emissions inventories and photochemical modeling for the 1-hour ozone NAAQS in the 2016 AQMP and 1-Hour Ozone Update, and approving the revised control strategy that has been reset to reflect the updated inventory and modeling results. Again, we are not waiving CARB's commitment to submit section 182(e)(5) contingency measures but, rather, we are approving a SIP revision that provides the technical basis (updated inventories and photochemical modeling) demonstrating that no such contingency measures are needed because the control strategy no longer relies on new technology measures.

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<sup>24</sup> CARB Resolution 18-55, December 13, 2018, 4.

<sup>25</sup> See the proposed rule at 28145-28147 for a detailed description of the District's aggregate emissions reduction commitments.

<sup>26</sup> See table 9 from the proposed rule – page 28151-28152.

In effect, our approval of the updated 1-hour ozone attainment demonstration in the 2016 AQMP and 1-Hour Ozone Update replaces the enforceable commitment by CARB to submit section 182(e)(5) contingency measures with an enforceable commitment by the District to take certain actions and achieve certain emissions reductions by 2022. We note that the enforceable commitments made by the District through adoption of the 2016 AQMP are similar to the enforceable commitments that the EPA has approved as part of attainment demonstrations in previous California air quality plans and that have withstood legal challenge.<sup>27</sup>

Lastly, we disagree with CCAEJ's assertion that it is not possible to determine at this point in time whether the new technology measures approved as part of the 2012 AQMP have achieved the necessary emissions reductions because that determination cannot be made until the 2022 deadline. Under these circumstances, the CAA requires an accounting of the remaining reductions to be achieved by new technology measures three years prior to attainment. In this case, the accounting had to have been submitted by 2019 to determine the extent to which section 182(e)(5) contingency measures are needed, which is why it was necessary for CARB to commit to submitting section 182(e)(5) contingency measures (as needed) by 2019. The updated 1-hour ozone attainment demonstration in the 2016 AQMP and 1-Hour Ozone Update provide the accounting of the remaining emissions reductions necessary to attain the 1-hour ozone NAAQS by 2022, and based on that analysis, CARB concludes that emissions reductions from new technology measures are no longer needed, given that the District's aggregate emissions reduction commitment of 20.6 tpd of NO<sub>x</sub> and 6.1 tpd of VOC by 2022 will close the gap

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<sup>27</sup> See *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015) (approval of state commitments to propose and adopt emissions control measures and to achieve aggregate emissions reductions for San Joaquin Valley ozone and particulate matter plans upheld); *Physicians for Social Responsibility – Los Angeles v. EPA*, 9th Cir., memorandum opinion issued July 25, 2016 (approval of air district commitments to propose and adopt measures and to achieve aggregate emissions reductions for South Coast 1-hour ozone plan upheld).

between the 2022 baseline emissions level (reflecting adopted measures) and the 2022 modeled attainment emissions level.<sup>28</sup>

**Comment #4:** Citing evidence of climate change from various sources, including sources published by the EPA, CARB, and the SCAQMD, CCAEJ asserts that the 2016 South Coast Ozone SIP fails to meet CAA requirements for attainment demonstrations because the attainment demonstrations for the 1-hour, 1997, and 2008 ozone NAAQS do not account for climate change (increased heat and high heat days). Moreover, CCAEJ asserts that the failure to account for climate change calls into question all the weight of evidence conclusions because evidence of increased difficulties in meeting ozone standards has been excluded from the analysis.

**Response #4:** We acknowledge that the attainment demonstrations in the 2016 South Coast Ozone SIP do not explicitly account for potential climate change impacts. Although EPA modeling guidance acknowledges the potential effect of climate change on ozone levels,<sup>29</sup> the EPA does not recommend that air agencies need to explicitly account for long-term climate change in attainment demonstrations. The guidance states that “there are significant uncertainties regarding the precise location and timing of climate change impacts on air quality. Generally, climate projections are more robust for periods at least several decades in the future because the forcing mechanisms that drive near-term natural variability in climate patterns (e.g., El Nino, North American Oscillation) have substantially larger signals over short time spans than the driving forces related to long-term climate change. In contrast, projections for SIP purposes are generally for time spans of less than 20 years. Given the relatively short time span between base

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<sup>28</sup> Table 3 of the June 17, 2019 proposed rule (84 FR 28132, at 28146) shows the District’s stationary and mobile source measures that are expected to achieve the District’s 2022 aggregate emissions reduction commitment.

<sup>29</sup> EPA, Office of Air Quality Planning and Standards, Modeling Guidance for Demonstrating Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze, EPA 454/R-18-009, November 2018 (“Final Modeling Guidance”), 31-32.

and future year meteorology in most SIP demonstrations, the EPA does not recommend that air agencies explicitly account for long-term climate change in attainment demonstrations.”<sup>30</sup> In contrast, the time spans between base and future year meteorology in the 2016 AQMP (year 2012)<sup>31</sup> and the modeled attainment years are 10, 11, and 19 years for the 1-hour, 1997, and 2008 ozone NAAQS, respectively. The attainment demonstrations in the 2016 South Coast Ozone SIP are thus consistent with our guidance in this respect, and we find that the failure to account for potential climate change in the attainment demonstrations does not undermine our approval of them. The same is true for the weight of evidence model runs (presented in chapter 5 of appendix V of the 2016 AQMP) that are also based on 2012 meteorology.

We note that our modeling guidance states that air agencies are welcome to consider potential climate impacts in their specific areas, especially where and when there is evidence of significant potential impacts,<sup>32</sup> and the SCAQMD has issued a request for proposals to evaluate meteorological factors and trends contributing to recent poor air quality in the South Coast.<sup>33</sup> The information that will be developed through this study, while too late to inform development of the 2016 AQMP, may inform development of future AQMPs.

**Comment #5:** CCAEJ asserts that the EPA’s proposed conditional approval as a contingency measure of CARB’s commitment to submit a contingency measure developed and adopted by the District, or as referred to by CCAEJ as “CARB’s plan to adopt a plan,” is inconsistent with the *Bahr* decision and violates the CAA. More specifically, CCAEJ objects to the contingency measure commitment by CARB because it would not provide for one year’s

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<sup>30</sup> Final Modeling Guidance, page 32.

<sup>31</sup> 2016 AQMP, appendix V (“Modeling and Attainment Demonstration”), page V-1-1.

<sup>32</sup> Final Modeling Guidance, page 32.

<sup>33</sup> SCAQMD Board Meeting, November 2, 2018, Agenda No. 9, Proposal: Issue RFP to Evaluate Metrological Factors and Trends Contributing to Recent Poor Air Quality in South Coast Air Basin.

worth of progress; because the commitment to submit a contingency measure will not be federally enforceable; because CARB has only submitted a plan to adopt a plan and thus the EPA has no basis to evaluate whether the contingency measure provides emissions reductions that are quantifiable, enforceable, permanent and surplus; and because the contingency measure would not comply with the requirement under the CAA that contingency measures take effect without further action by the state or the EPA.

**Response #5:** We did not propose to conditionally approve CARB's commitment to submit a revised District rule (to include contingent provisions to be triggered by a failure to meet an RFP milestone) as a contingency measure. We proposed to conditionally approve the RFP contingency measure element of the 2016 South Coast Ozone SIP that includes the emissions analysis from the 2018 SIP Update documenting how the measure (once adopted, submitted and approved) would be sufficient to meet the RFP contingency measure requirement in CAA sections 172(c)(9) and 182(c)(9) and that will include the yet-to-be-submitted District rule contingency measure. CARB's commitment to submit such a revised District rule is not itself part of the contingency measure element, but is the basis, in part, of our proposing conditional approval under CAA section 110(k)(4).

Under CAA section 110(k)(4), the EPA may conditionally approve a SIP revision based on a state commitment to adopt specific enforceable measures by a date certain, but no later than 1 year after the date of the final conditional approval. Section 110(k)(4) does not require that the state submit the commitment as a SIP revision. We believe that the District's commitment to revise a rule or rules, or adopt a new rule or rules, to include provisions to eliminate exemptions or reduce emissions limits upon an EPA determination that the South Coast has failed to meet an RFP milestone, and CARB's commitment to submit the revised District rule within 1 year of

final conditional approval, to be a sufficient basis to conditionally approve the contingency measure element of the 2016 South Coast Ozone SIP. Section 110(k)(4) also provides that conditional approvals shall be treated as disapprovals if the state fails to comply with the commitments made.

We acknowledge that, because CARB's commitment to submit a revised District rule will not be approved into the SIP, it will not be federally enforceable. However, as noted above, CAA section 110(k)(4) authorizes the EPA under certain circumstances to conditionally approve a SIP revision based on commitments that are not part of the SIP. Instead of a potential lawsuit for failure to fulfill a SIP obligation, the consequence for a state's failure to meet a commitment relied upon for conditional approval is that the conditional approval (in this case, of the contingency measure element) becomes a disapproval that triggers sanctions clocks under CAA section 179(a) and 40 CFR 52.31.

We also acknowledge that we cannot at the present time evaluate whether the contingency measure (i.e., the yet to be revised District rule including contingency provisions) meets the various criteria for approvable control measures in general – such as quantifiable, enforceable, permanent and surplus. This circumstance, however, arises whenever the EPA issues a conditional approval of a SIP revision. In all such cases, the EPA cannot judge definitively, at the time of the conditional approval, whether the SIP revision that a state will later submit (within one year of the conditional approval) will adequately remedy the deficiency that prevents full approval of the original SIP revision. In such circumstances, the EPA evaluates the commitment of the state to determine whether the submission, if consistent with the commitment, will be likely to resolve the deficiency. In this case, the deficiency in the RFP contingency measure element is the absence of a specific measure that will reduce emissions in

the event that the South Coast fails to meet an RFP milestone for the 2008 ozone NAAQS and that, once triggered, will take effect without significant further action by the state or the EPA and will thereby meet the requirements of CAA sections 172(c)(9) and 182(c)(9) consistent with the *Bahr* decision.

Once the District fulfills its commitment (i.e., to revise a rule, or adopt a new rule, to include contingent provisions), and CARB submits the revised rule as a SIP revision (within one year of final conditional approval), then the EPA will evaluate the rule and take appropriate action to propose approval or disapproval of the rule for compliance with the general criteria for approvability as well as the specific criteria set forth in CAA sections 172(c)(9) and 182(c)(9) for RFP contingency measures. The public will then have the opportunity to comment on the EPA's proposed action on the submitted rule.

As noted in our June 17, 2019 proposed rule, we believe that the specific types of revisions the District has committed to make, such as increasing the stringency of an existing requirement or removing an exemption, upon an RFP milestone failure would comply with the requirements in CAA sections 172(c)(9) and 182(c)(9) because they would be undertaken if the area fails to meet an RFP milestone and would take effect without significant further action by the state or the EPA.<sup>34</sup> However, if we find that the contingency measure SIP revision fails to meet the applicable requirements, then we would issue a disapproval, and a disapproval would trigger sanctions clocks under CAA section 179(a) and 40 CFR 52.31.

Lastly, we acknowledge that it is unlikely that the RFP contingency measure, once adopted by the District, will achieve the equivalent of one year's worth of progress in the South Coast, but we do not believe that an RFP contingency measure in the South Coast must achieve

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<sup>34</sup> 84 FR 28132, at 28162-28163 (June 17, 2019).



one year's worth of progress given the extent to which future baseline emissions in the South Coast exceed the RFP milestones for the area. First, we note that neither the CAA nor the EPA's implementing regulations for the ozone NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve. Rather, the EPA has recommended in guidance that contingency measures should provide emissions reductions approximately equivalent to one year's worth of RFP, which, with respect to ozone in the South Coast ozone nonattainment area, amounts to approximately 16 tpd of VOC or NO<sub>x</sub> reductions.<sup>35</sup>

In making the recommendation that contingency measures achieve one year's worth of RFP, the EPA has considered the overarching purpose of such measures in the context of attainment planning. The purpose of emissions reductions from implementation of contingency measures is to ensure that, in the event of a failure to meet an RFP milestone or a failure to attain the NAAQS by the applicable attainment date, the state will continue to make progress toward attainment at a rate similar to that specified under the RFP requirements. The state will achieve the reductions from the contingency measures while conducting additional control measure development and implementation as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan.<sup>36</sup> The facts and circumstances of a given nonattainment area may justify larger or smaller amounts of emissions reductions.

The EPA has also interpreted the Act to allow already-implemented measures to qualify as contingency measures so long as the emissions reductions from such measures are surplus to those necessary for RFP or attainment. In light of the *Bahr* decision, already-implemented measures no longer qualify as contingency measures for SIP purposes in the states located within

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<sup>35</sup> 84 FR 28132, at 28162 (June 17, 2019).

<sup>36</sup> 57 FR 13498, at 13512 (April 16, 1992).

the jurisdiction of the Ninth Circuit Court of Appeals. Thus, in the states affected by the *Bahr* decision, the EPA evaluates contingency measure SIP elements to determine whether they include contingency measures that are structured to meet the statutory requirements set forth in CAA sections 172(c)(9) and 182(c)(9) (e.g., structured to take effect prospectively in the event of a failure to achieve an RFP milestone or to attain by the applicable attainment date). The EPA also evaluates whether the contingency measure or measures would provide emissions reductions that, when considered with surplus emissions reductions from already-implemented measures or other extenuating circumstances, ensure sufficient continued progress in the event of a failure to achieve an RFP milestone or to attain the ozone NAAQS by the applicable attainment date. We continue to evaluate the sufficiency of continued progress that will result from contingency measures in light of our guidance, but in appropriate circumstances, do not believe that the contingency measures themselves must provide for one year's worth of RFP. Such appropriate circumstances include where sufficient progress would be maintained by the contingency measures and surplus emissions reductions from other sources while the state conducts additional control measure development and implementation as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan. In other words, if there are additional emissions reductions projected to occur that a state has not relied upon for purposes of RFP or attainment or to meet other nonattainment plan requirements, and that result from measures the state has not adopted as contingency measures, then those reductions may support EPA approval of contingency measures identified by the state even if they would result in less than one year's worth of RFP in appropriate circumstances.

In this instance, the RFP contingency measure element of the 2016 AQMP, as modified by the 2018 SIP Update, and supplemented by the commitments to adopt and submit a local

contingency measure, relies upon a to-be-adopted District contingency measure. In our proposed rule, we indicated that the District had not provided an estimate of the emissions reductions from the to-be-adopted District contingency measure, but that we assume that the emissions reductions may not achieve one year's worth of RFP given the types of rule revisions under consideration and the magnitude of emissions reductions constituting one year's worth of RFP in the South Coast. As to whether the contingency measure, once adopted, would provide for sufficient continued progress in the event of a failure to achieve an RFP milestone, we reviewed the documentation provided in the 2018 SIP Update of "surplus" (i.e., emissions reductions over and above the reductions necessary to demonstrate RFP in the South Coast nonattainment area) reductions from CARB's already-adopted mobile source control program in the RFP milestone years. For the South Coast nonattainment area, CARB's estimates of "surplus" reductions in the various RFP milestones years (ranging from 168 tpd to 262 tpd of NO<sub>x</sub>) provide the factual basis for us to conclude that the to-be-adopted District contingency measure need not in itself achieve one year's worth of RFP.<sup>37</sup>

We anticipate that the emissions reductions from the contingency measure or measures ultimately adopted by the District will be sufficient, although they may achieve less than 16 tpd (i.e., one year's worth of RFP), because already-implemented measures (although not relied upon directly to meet the statutory contingency measure requirement) will ensure sufficient continued progress in the event of a failure to achieve an RFP milestone. Therefore, even though we do not know the extent of emissions reductions from the to-be-adopted contingency measure, we

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<sup>37</sup> 2018 SIP Update, 65. The estimate of the RFP milestone surplus as ranging from 168 tpd to 262 tpd of NO<sub>x</sub> is based on the 2018 SIP Update estimate of surplus in terms of percentages (range of 31.5 percent to 47.2 percent) times the 2011 baseline NO<sub>x</sub> emissions level of 534.2 tpd.

consider the contingency measure to be sufficient to remedy the deficiency in the contingency measure element of the 2016 South Coast Ozone SIP.

#### **IV. Final Action**

For the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve as a revision to the California SIP the following portions of the 2016 South Coast Ozone SIP submitted by CARB on April 27, 2017, December 5, 2018, December 20, 2018, and August 5, 2019:

- Base year emissions inventory element in the 2016 AQMP as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS;
- Emissions statement element, including District Rule 301 (“Permitting and Associated Fees”) (paragraphs (e)(1)(A) and (B), (e)(2), (e)(5) and (e)(8)), as amended by the District on July 12, 2019, as meeting the requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- RACM demonstration element in the 2016 AQMP as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone NAAQS;
- Updated attainment demonstration element for the revoked 1-hour ozone NAAQS in the 2016 AQMP and the 1-Hour Ozone Update as meeting the requirements of CAA section 182(c)(2)(A);<sup>38</sup>

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<sup>38</sup> Because the 1-hour ozone attainment demonstration in the 1-Hour Ozone Update does not rely on advanced control technology measures under CAA section 182(e)(5), final approval of the attainment demonstration in the 1-Hour Ozone Update would fulfill CARB’s commitment, in adopting the 2012 AQMP, to achieve by January 1, 2022, aggregate emissions reductions from advanced control technology measures under CAA section 182(e)(5) or actual emissions decreases that occur and to develop, adopt and submit contingency measures by 2019 if advanced control technology measures do not achieve planned reductions.

- Updated attainment demonstration element for the revoked 1997 ozone NAAQS in the 2016 AQMP as meeting the requirements of CAA section 182(c)(2)(A);
- Attainment demonstration element for the 2008 ozone NAAQS in the 2016 AQMP as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- SCAQMD's commitments in the 2016 AQMP and District Resolution 17-2 to adopt, submit, and implement certain defined measures, as listed in tables 4-2 and 4-4 of Chapter 4 in the 2016 AQMP, and to achieve specific aggregate emissions reductions (shown in tables 4-9 through 4-11 of the 2016 AQMP) by 2022, 2023 and 2031 for the 1-hour ozone NAAQS, 1997 ozone NAAQS, and 2008 ozone NAAQS, respectively, and to substitute any other measures as necessary to make up any emissions reduction shortfall;<sup>39</sup>
- CARB's commitments in the 2016 State Strategy and CARB Resolution 17-7 to bring to the CARB Board for consideration the list of proposed SIP measures outlined in the 2016 State Strategy and included in attachment A (to Resolution 17-7) according to the schedule set forth in attachment A, and to achieve the aggregate emissions reductions in the South Coast of 113 tpd of NO<sub>x</sub> and 50 to 51 tpd of VOC by 2023 for the 1997 ozone NAAQS, and 111 tpd of NO<sub>x</sub> and 59 to 60 tpd of VOC by 2031 for the 2008 ozone NAAQS;<sup>40</sup>
- The provisions in the 2016 State Strategy for the development of new technology measures for attainment of the 1997 ozone NAAQS and 2008 ozone NAAQS in the

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<sup>39</sup> Final approval of SCAQMD's commitments in the 2016 AQMP would update the corresponding commitments made by the District in the 2007 South Coast Ozone SIP for the 1997 ozone NAAQS and in the 2012 AQMP for both the 1997 ozone NAAQS and the 1-hour ozone NAAQS.

<sup>40</sup> Final approval of CARB's commitments in the 2016 State Strategy for the South Coast would update the corresponding commitments by CARB in the 2007 South Coast Ozone SIP for the 1997 ozone NAAQS.

South Coast pursuant to CAA section 182(e)(5), and CARB's commitment in Resolution 17-8 to adopt and submit by 2028 contingency measures to be implemented if the new technology measures do not achieve the planned emissions reductions for the 2008 ozone NAAQS, as well as attainment contingency measures meeting the requirements of CAA section 172(c)(9);<sup>41</sup>

- ROP demonstration element in the 2016 AQMP as meeting the requirements of CAA 182(b)(1) and 40 CFR 51.1110(a)(2) for the 2008 ozone NAAQS;
- RFP demonstration element in the 2018 SIP Update as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii) for the 2008 ozone NAAQS;
- VMT emissions offset demonstration element in the 2016 AQMP as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- Clean fuels or advanced control technology for boilers element in the 2016 AQMP as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- Motor vehicle emissions budgets in the 2018 SIP Update for the RFP milestone years of 2020, 2023, 2026, 2029, and the attainment year of 2031, as shown below, because they

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<sup>41</sup> For the purposes of the 2007 South Coast Ozone SIP, CARB committed to develop, adopt and submit by 2020 contingency measures to be implemented if the new technologies do not achieve the planned emissions reductions for the 1997 ozone NAAQS, as well as additional attainment contingency measures meeting the requirements of CAA section 172(c)(9). The EPA approved that commitment at 77 FR 12674, 12695 (March 1, 2012). CARB's pre-existing commitments with respect to section 182(e)(5) and section 172(c)(9) attainment contingency measures for the South Coast for the 1997 ozone NAAQS are not affected by today's final action on the 2016 South Coast Ozone SIP.

are consistent with the RFP and attainment demonstrations for the 2008 ozone NAAQS finalized for approval herein and meet the other criteria in 40 CFR 93.118(e);

| <b>Transportation Conformity Budgets for the 2008 Ozone NAAQS in the South Coast (summer planning inventory, tpd)</b> |            |                       |
|---|------------|-----------------------|
| <b>Budget Year</b>  | <b>VOC</b> | <b>NO<sub>x</sub></b> |
| 2020  | 80         | 141                   |
| 2023  | 68         | 89                    |
| 2026  | 60         | 77                    |
| 2029  | 54         | 69                    |
| 2031  | 50         | 66                    |

Source: Table IX-3 of the 2018 SIP Update.

- General conformity budgets of NO<sub>x</sub> and VOC of 2.0 tpd of NO<sub>x</sub> and 0.5 tpd of VOC (on an annual basis) from 2017 to 2030, and 0.5 tpd of NO<sub>x</sub> and 0.2 tpd VOC in 2031, as meeting the requirements of CAA section 176(c) and 40 CFR 93.161;
- Enhanced vehicle inspection and maintenance program element in the 2016 AQMP as meeting the requirements of CAA section 182(c)(3) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- Clean fuels fleet program element in the 2016 AQMP as meeting the requirements of CAA sections 182(c)(4) and 246 and 40 CFR 51.1102 for the 2008 ozone NAAQS; and
- Enhanced monitoring element in the 2016 AQMP as meeting the requirements of CAA section 182(c)(1) and 40 CFR 51.1102 for the 2008 ozone NAAQS.<sup>42</sup>

With respect to the MVEBs, we are taking final action to limit the duration of the approval of the MVEBs to last only until the effective date of the EPA's adequacy finding for

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<sup>42</sup> Regarding other applicable requirements for the 2008 ozone NAAQS in the South Coast, the EPA has previously approved SIP revisions that address the nonattainment area requirements for NSR and for implementation of RACT for the South Coast for the 2008 ozone NAAQS. See 83 FR 64026 (December 13, 2018) (NSR) and 82 FR 43850 (September 20, 2017) (RACT). SIP revisions for the South Coast addressing the penalty fee requirements under CAA sections 181(d)(4) and 185 are not yet due for the 2008 ozone NAAQS.

any subsequently submitted budgets. We are doing so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets<sup>43</sup> prior to our taking final action on the future SIP revision that includes the updated budgets.

Lastly, we are taking final action, under CAA section 110(k)(4), to approve conditionally the contingency measure element of the 2016 South Coast Ozone SIP as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP contingency measures. Our approval is based on commitments by the District and CARB to supplement the element through submission, as a SIP revision (within one year of final conditional approval action), of a new or revised District rule or rules that would include a more stringent requirement or would remove an exemption if an RFP milestone is not met.<sup>44</sup>

## **V. Incorporation by Reference**

In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SCAQMD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at EPA Region IX (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

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<sup>43</sup> On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements. See 84 FR 41717.

<sup>44</sup> Letter dated January 29, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB; and letter dated February 13, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Mike Stoker, Regional Administrator, EPA Region IX. Also see letter dated May 2, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB; and letter dated May 20, 2019, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX.



Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves, or conditionally approves, state plans as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355,

May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT**

**DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 29, 2019.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart F – California**

2. Section 52.220 is amended by adding paragraphs (c)(514)(ii)(A)(3), (c)(517)(ii)(A)(3) through (6), (c)(517)(ii)(B)(4) and (5), and (c)(525) and (526) to read as follows:

**§ 52.220 Identification of plan - in part.**

\* \* \* \*

(c) \* \* \*

(514) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(3) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, excluding chapters II through VIII, and chapter X, and excluding pages A-3 through A-30 of appendix A (“Nonattainment Area Inventories”).

\* \* \* \*

(517) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(3) Resolution 17-7, 2016 State Strategy for the State Implementation Plan, March 23, 2017, commitments to a rulemaking schedule; to achieve aggregate emissions reductions of 113 tons per day (tpd) of NO<sub>x</sub> and 50 to 51 tpd of VOC in the South Coast by 2023, and 111 tpd of NO<sub>x</sub> and 59 to 60 tpd of VOC in the South Coast by 2031; and the rulemaking schedule included in attachment A to Resolution 17-7, only.

(4) Revised Proposed 2016 State Strategy for the State Implementation Plan, adopted on March 23, 2017, subchapter titled “South Coast Commitment” in chapter 3 (“Proposed SIP Commitment”).

(5) Resolution 17-8, 2016 Air Quality Management Plan for Ozone and PM<sub>2.5</sub> in the South Coast Air Basin and the Coachella Valley, March 23, 2017, commitments to develop, adopt, and

submit contingency measures by 2028 for the 2008 ozone NAAQS if advanced technology measures do not achieve planned reductions.

(6) Letter from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, California Air Resources Board, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX, May 20, 2019, clarification that commitments in Resolution 17-8 to submit contingency measures by 2028 if advanced technology measures do not achieve planned reductions includes a commitment to submit attainment contingency measures to satisfy the requirements in sections 172(c)(9) and 182(c)(9) of the Clean Air Act, only.

(B) \* \* \*

(4) Final 2016 Air Quality Management Plan (March 2017) and appendices, adopted March 3, 2017, excluding the portions of the plan and appendices related solely to PM<sub>2.5</sub> and Coachella Valley, and excluding the portion of chapter 6 that is titled “California Clean Air Act Requirements,” chapter 8 (“Looking Beyond Current Requirements”), chapter 9 (“Air Toxics Control Strategy”) and chapter 10 (“Climate and Energy”).

(5) Resolution 17-2, A Resolution of the South Coast Air Quality Management District (SCAQMD or District) Governing Board certifying the Final Program Environmental Impact Report (PEIR) for the 2016 Air Quality Management Plan (AQMP or Plan), and adopting the 2016 AQMP, which is to be submitted into the California State Implementation Plan (SIP), March 3, 2017, commitments to develop, adopt, submit and implement the ozone control measures in tables 4-2 and 4-4 of chapter 4 in the AQMP as expeditiously as possible to meet or exceed the commitments identified in tables 4-9, 4-10 and 4-11 of the AQMP, and to substitute any other measures as necessary to make up any emissions reduction shortfall.

\* \* \* \* \*

(525) The following plan was submitted on December 20, 2018, by the Governor’s designee.

(i) [Reserved]

(ii) Additional materials.

(A) South Coast Air Quality Management District.

(1) Updated Federal 1979 1-Hour Ozone Standard Attainment Demonstration (November 2018), adopted November 2, 2018.

(2) [Reserved]

(B) [Reserved]

(526) The following rule was submitted on August 5, 2019, by the Governor’s designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rule 301, “Permitting and Associated Fees” (paragraphs (e)(1), except (e)(1)(C), (e)(2), (5), and (8) only), amended on July 12, 2019.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

3. Section 52.244 is amended by adding paragraph (a)(8) to read as follows:

**§ 52.244 Motor vehicle emissions budgets.**

\* \* \* \* \*

(8) South Coast, approved **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

\* \* \* \* \*

4. Section 52.248 is amended by adding paragraph (h) to read as follows:

**§ 52.248 Identification of plan – conditional approval.**

\* \* \* \* \*

(h) The EPA is conditionally approving the California State Implementation Plan (SIP) for the South Coast for the 2008 ozone NAAQS with respect to the reasonable further progress (RFP) contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9). The conditional approval is based on a commitment from the South Coast Air Quality Management District (District) in a letter dated January 29, 2019, and clarified in a letter dated May 2, 2019, to adopt specific rule revisions, and a commitment from the California Air Resources Board (CARB) dated February 13, 2019 to submit the amended District rule or rules to the EPA within 12 months of the effective date of the final conditional approval. If the District or CARB fail to meet their commitments within one year of the effective date of the final conditional approval, the conditional approval is treated as a disapproval.

[FR Doc. 2019-21325 Filed: 9/30/2019 8:45 am; Publication Date: 10/1/2019]